

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:10-HC-2089-D

ATIBA WADE, )  
Petitioner, )  
v. ) **ORDER**  
WARDEN TRACY JOHNS, )  
Respondent. )

On May 17, 2010, Atiba Wade (“Wade” or “petitioner”) filed a petition for writ of habeas corpus [D.E. 1] under 28 U.S.C. § 2241 (“section 2241”) challenging his present confinement. Wade is confined at the Medium Security Federal Correctional Institution in Butner, North Carolina, pending commitment proceedings against him by the government under 18 U.S.C. § 4248 (“section 4248”) in United States v. Wade, No. 5:07-HC-2078-D (E.D.N.C.). The section 4248 action remains pending.

On December 6, 2010, the United States Court of Appeals for the Fourth Circuit held that a person against whom a commitment action under section 4248 has been initiated must exhaust all remedies within the section 4248 action prior to seeking a writ of habeas corpus under section 2241. Timms v. Johns, 627 F.3d 525, 533 (4th. Cir. 2010). Thus, the Fourth Circuit’s decision in Timms controls the disposition of Wade’s petition for writ of habeas corpus.

Accordingly, the petition for writ of habeas corpus [D.E. 1] is DISMISSED WITHOUT PREJUDICE. The government’s motion to dismiss [D.E. 4] and motion to stay [D.E. 8] are

DENIED AS MOOT. The Clerk is DIRECTED to CLOSE the case.

SO ORDERED. This 28 day of January 2011.

  
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JAMES C. DEVER III  
United States District Judge